



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2013-0066; Notice 2]

Ford Motor Company, Grant of Petition for
Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA),
Department of Transportation (DOT)

ACTION: Grant of Petition

SUMMARY: Ford Motor Company (Ford) has determined that certain model year (MY) 2013 Ford Fusion and Lincoln MKZ passenger cars built from August 12, 2012 through January 14, 2013 do not fully comply with paragraph S3.1.4.1(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 102 *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect*, or paragraph S5.2.1 of FMVSS No. 114 *Theft Protection and Rollaway Prevention*. Ford has filed an appropriate report dated March 4, 2013, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

ADDRESSES: For further information on this decision contact Amina Fisher, Office of Vehicle Safety Compliance, the National

Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5307, facsimile (202) 366-7002.

SUPPLEMENTARY INFORMATION:

I. Overview: Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Ford has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Ford submitted its petition on March 21, 2013. On February 11, 2014, Ford submitted a petition supplement to clarify how the specific vehicles affected do not fully comply with FMVSS No. 102 and FMVSS No. 114.

Notice of receipt of the petition was published, with a 30-day public comment period, on March 3, 2014, in the Federal Register (79 FR 11871.) No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2013-0066."

II. Vehicles Involved: Affected are approximately 4,727 MY 2013 Ford Fusion and Lincoln MKZ passenger cars built from August 12, 2012 through January 14, 2013 at the Hermosillo Stamping and Assembly Plant (HSAP) in Hermosillo, Mexico.

III. Noncompliance: Ford has determined that because the affected vehicles were inadvertently shipped to dealers in the "Factory Mode" instead of "Transport Mode," the transmission

gear selected in relation to other gears is not always displayed by the shift position sequence indicator (aka, PRNDL) as required by paragraph S3.1.4.1(a) of FMVSS No. 102. In addition, the affected Ford Fusion vehicles manufactured with mechanical key ignition systems do not fully meet the requirements of paragraph S5.2.1 of FMVSS No. 114 because under certain conditions the mechanical key may be removed from the ignition lock cylinder when the transmission shift lever is in a position other than "park."

IV. Rule Text: Paragraph S3.1.4.1(a) of FMVSS No. 102 specifically states:

S3.1.4.1 Except as specified in S3.1.4.3, if the transmission shift position sequence includes a park position, identification of shift positions, including the positions in relation to each other and the position selected, shall be displayed in view of the driver whenever any of the following conditions exist:

- (a) The ignition is in a position where the transmission can be shifted; ...

Paragraph S5.2.1 of FMVSS No. 114 specifically states:

S5.2.1 Except as specified in S5.2.3, the starting system required by S5.1 must prevent key removal when tested according to the procedures in S6, unless the transmission or gear selection control is locked in "park" or becomes locked in "park" as a direct result of key removal.

V. Summary of Ford's Analyses: Ford stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. The vehicle design is self-remedying. The affected vehicles are designed to automatically switch from Factory Mode to Transport Mode after 60 key cycles (beginning with assembly line initialization). Once in Transport Mode the vehicles are fully compliant with FMVSS requirements.
2. While in Factory Mode, affected vehicles clearly display the message "Factory Mode Contact Dealer" in either the message center or instrument cluster. Additionally, the "Factory Mode Contact Dealer" message does not obscure any regulatory malfunction indicator lamps, or (non-mandated) cautionary warnings.
3. The dealership's Pre-Delivery Inspection instructions require dealerships to change the vehicle into Customer Mode, prior to delivery, which ensures the condition will be remedied before delivery to the customer. Ford is not aware of any of the subject vehicles being delivered to customers in Factory Mode.
4. All other requirements of FMVSS No. 102 and FMVSS No. 114 are fully satisfied.
5. Ford is not aware of any owner complaints, accidents, or injuries attributed to this condition.

Ford has additionally informed NHTSA that it has corrected the noncompliance so that all future vehicles will comply with FMVSS Nos. 102 and 114.

In summation, Ford believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

VI. NHTSA Decision:

NHTSA's Analysis of Ford's Arguments: Ford stated that while in Factory Mode, affected vehicles clearly display the message "Factory Mode - Contact Dealer" in a manner that does not obscure any regulatory malfunction indicator lamps. If a consumer were to receive a vehicle in Factory Mode the aforementioned warning message will alert the driver in a clear manner. The consumer would then most likely contact the dealer, as instructed, who would provide remedy for the condition. If the consumer chose not to contact the dealer, the FMVSS No. 102 noncompliance of not displaying shift positions would only occur when the engine is not running and the battery voltage falls below 12.3 volts. The PRNDL shift level positions will be properly illuminated whenever the engine is running under both stationary and moving conditions.

With regards to the FMVSS No. 114 noncompliance Ford stated that while in Factory Mode the mechanical key may be removed from the ignition lock cylinder when the transmission shift lever is in a position other than "park" if the engine is not running and the CAN network has entered a hibernation mode after approximately 15 seconds of total vehicle electrical inactivity. When a consumer turns their vehicle off they are likely to remove the mechanical key from the cylinder prior to the vehicle reaching 15 seconds of total electrical inactivity. Removing the key prior to these 15 seconds would prevent the vehicle from experiencing a condition noncompliant to FMVSS No. 114 as it would require the transmission control to be shifted to "park" before key removal.

Ford stated that dealerships have Pre-Delivery Inspection instructions which require them to change vehicles from Transport Mode to Customer Mode¹. During this inspection, if the dealership finds any of the subject vehicles in the Factory Mode the mode will be changed directly to the Customer Mode. Actions taken by the dealership during the pre-delivery inspection will ensure noncompliant vehicles are remedied prior to delivery to

¹ According to Ford, both Transport and Customer Modes are fully compliant with all FMVSS No 102 and FMVSS No.114 requirements. The only difference between the two modes is the automatic timing set for placing the vehicle into its "Battery Saver" condition. In the Transport Mode the battery saver condition occurs after 1 minute of inactivity to minimize battery drain during transport from the OEM factory to the vehicle dealership, whereas, in the Customer Mode the battery saver condition occurs after ten minutes of inactivity, the timing is extended for customer conveniences while parked. Ford also explained that if the vehicle were to be inadvertently left in the Transport Mode upon delivery to the customer, the vehicle would automatically shift to the Customer Mode after 50-62 miles.

the customer. These instructions from the manufacturer to their dealerships will help to prevent consumers from receiving vehicles not in Customer Mode.

Lastly, Ford states that the vehicle is designed to be self-remedying and will automatically switch from Factory Mode to the fully compliant Transport Mode after 60 key cycles. If a consumer were to receive a vehicle in Factory Mode and decided to ignore the warning message, their vehicle would automatically switch to a fully compliant mode after the required number of key cycles.

We believe that drivers of the affected vehicles will be sufficiently alerted by the message on the instrument cluster which reads "Factory Mode - Contact Dealer". Furthermore, if they choose to ignore this message, the vehicle is designed to be self-remedying after 60 ignition key cycles. Considering the unique conditions involved with these noncompliances, and Ford's statement about the lack of associated complaints, accidents or injuries related to the affected vehicles, Ford's noncompliance is considered inconsequential.

NHTSA's Decision: In consideration of the foregoing, NHTSA has decided that Ford has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Ford's petition is hereby granted and Ford

is exempted from the obligation of providing notification of, and remedy for the subject noncompliances.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the 4,727 vehicles that Ford no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction for delivery or introduction into interstate commerce of the noncompliant vehicles under their control after Ford notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Jeffrey Giuseppe, Director,
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